IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

WP(C).No. 30535 of 2007(I)

PETITIONERS:
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1. SARA ALEXANDER, W/O.ALEXANDER,
CHAKALAMURIYIL HOUSE, PUTHIYAKAVU,
MAVELIKKARA.

2. THOMAS ALEXANDER,
CHAKALAMURIYIL HOUSE, DO.

BY ADV. SRI.KURIAN GEORGE KANNAMTHANAM (SR.)
SRI.VINCENT JOSEPH
SRI.TONY GEORGE KANNANTHANAM

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
INDUSTRIES DEPARTMENT, GOVT. SECRETARIAT,
TRIVANDRUM.

2. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE,
GANDHI NAGAR, COCHIN-20.

BY GOVERNMENT PLEADER SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/10/2007, THE COURT ON 19/10/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 30535 OF 2007 I
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Dated this the 19th October, 2007

J U D G M E N T

The prayer in this writ petition is to quash Ext. P10 and to declare that Section 29(1) of the State Financial Corporation Act, 1951 confers an absolute right over the property transferred to the petitioners under Ext. P1.

2. The facts of this case are that an extent of 1 acre 77 cents of land in Industrial Development Area, Edayar was allotted by the 2nd respondent to M/s. Oasis Environmental Enterprises on hire purchase basis. Such allotment was in terms of the provisions contained in the Land Allotment Rules (for short the 'Rules') framed under the Land Assignment Act, 1960. It is stated that the allottee had paid instalments and were permitted by the 2nd respondent to mortgage the said land to avail of financial assistance from Kerala Financial Corporation (for short 'KFC'). Accordingly, the land was mortgaged and financial assistance was availed of from the K.F.C. Default was committed by the allottee and KFC

took over possession of the property in terms of the provisions contained in Section 29 of the State Financial Corporation Act, 1951 (hereinafter referred to as the 'Act') and eventually the land was put in auction in June, 2000 in which petitioners were the successful bidders. Accordingly Ext. P1 registered sale deed was executed by KFC in their favour.

3. It is seen from Ext. P2 dated 15-7-2000 that before the execution of the sale deed petitioners had applied to the 2nd respondent to regularise the allotment in their favour. The request was allowed by Ext. P2 proceedings of the 2nd respondent, subject to the petitioners executing necessary agreement and remitting to the Government amount, if any, due from the original allottee. Thus with the execution of Ext. P1 sale deed on 11-7-2000 and regularising the allotment by Ext. P2 proceedings of the 2nd respondent, the petitioners came in possession of the land.

4. Ext. P3 dated 7-3-2007 is a notice issued by the 2nd respondent to the petitioners informing them that even after lapse of more than 6 years they have

not executed the agreement as directed in Ext. P2 and had thus violated the provisions of the Land Allotment Rules. They were called upon to show cause why the land and the assets should not be resumed without further notice. In Ext. P4 reply issued by them they contended that the unit in the land was taken over by K.F.C and that at the time of auction sale, the KFC had a perfectly valid title over the land and were fully competent to execute the sale deed. Thus, according to the petitioners, the 2nd respondent had no right to demand for an agreement to regularise the purchase as the purchase is even otherwise regular and legal. On this basis, they contended that Ext. P3 notice is not legal.

5. Thereafter, the 2nd respondent again issued Ext. P5 informing that regularisation of allotment to the petitioners was on condition of their executing an agreement, that even after lapse of more than 6 years, the agreement was not executed and that the project proposal was not implemented and that the land is still kept unutilised in violation of the Land Allotment

Rules. They were called upon to appear before the 2nd respondent and produce evidence regarding the steps taken for the implementation of the project. To this again the petitioners responded by Ext. P6 where it was contended that they had absolute title over the land and therefore the 2nd respondent had no right to demand the execution of an agreement or insist on the utilisation of the land.

6. Even thereafter notices were issued and were replied by the petitioners reiterating their earlier stand. Finally Ext. P10 order was issued by the 2nd respondent. In Ext. P10 it is stated that though the original allottee had remitted the amount due under the hire purchase agreement, title to the land was not transferred to the allottee who had created charge over the land by mortgaging the same to the K.F.C. It is stated that even though the title was not transferred and the K.F.C was not permitted to create charge over the land, the proposal made by the petitioner to activate the closed unit was found feasible and hence the allotment was regularised in the name of the

petitioner by Ext. P2 order. It is stated that in terms of Rule 16 of the Land Allotment Rules issued as per GO(MS) No. 169/ID dated 5-4-1969 a period of six months is fixed for the allottee to utilise the land for the purpose for which it is allotted and that the petitioners have failed to implement the project even after lapse of about 7 years. According to the 2nd respondent, the petitioners had not applied for extension of time as envisaged in the Land Allotment Rules and are retaining possession, and that the reply given by them was unsatisfactory. In the above circumstances, on the advice of the Director of Industries and Commerce, after affording an opportunity of hearing to the allottee, Ext. P10 order was issued ordering resumption of land. It is challenging Ext. P10 order this writ petition has been filed.

7. The learned senior counsel for the writ petitioner raised only one argument. According to him, the land in question was mortgaged to the K.F.C with the permission of the 2nd respondent. It was the K.F.C which took over the land and sold it in public auction

in which the petitioners were the successful bidders and got Ext. P1 sale deed executed in their favour. According to the learned counsel, once sale is conducted by K.F.C in terms of the provisions contained in Section 29 of the Act, the right conferred on the buyer is absolute and the buyer was not subject to the obligations that are created under the Land Allotment Rules framed by the 1st respondent. It is submitted that the sale having been held in terms of the SFC Act, a Central Legislation, any provision contrary thereto contained in the rules framed by the 1st respondent are not binding on the purchaser.

8. I am not able to agree with the submission made. It cannot be disputed that the land in question was allotted in terms of the provisions contained in the Land Allotment Rules framed by the 1st respondent for allotment of industrial plots. Going by Ext. P10 it is very doubtful whether even the original allottee had the right to mortgage the property. It is also clear that though the original allottee had remitted the hire purchase dues, the title to the land was not

transferred to its name. Therefore, the title continues to be with the 1st respondent.

9. As can be seen from the Land Allotment Rules, the order of allotment and even transfer of title itself is conditional. Therefore even if land is assigned, the allottee was always subject to obligations that are created under the Rules. Thus if there was violation of the terms of allotment such as the allottee failing to set up an industrial unit in the land within the time prescribed, the respondents always had the right to initiate action for the resumption of land.

10. It is not in controversy that the land was mortgaged to K.F.C and that the K.F.C had conducted the sale which resulted in Ext. P1 sale deed in favour of the petitioners. It cannot be contended that by virtue of Ext. P1 the petitioners derived any right which the original allottee did not have. At any rate, the petitioners can only aspire to get into the shoes the original allottee and nothing more than that. If the original allottee's rights are circumscribed by the

provisions of the Rules, such limitations are equally applicable to the petitioners also. The fact that the Land Allotment Rules have been framed under the Land Assignment Act, a State Legislation, and that the sale conducted by the K.F.C was in terms of Section 29 of the Act, a Central Act, is hardly of any relevance. Even otherwise if the argument of the senior counsel is accepted the consequences are very grave. It might even lead to a situation where the land belonging to the Government can be sold away by the financial institutions and the buyers will not be bound by any of the conditions of the Rules. That will defeat the very purpose of framing the Rule itself which provides for concessional allotment of land in Industrial Development Areas to prospective industrialists.

11. In this case it is the admitted fact that the allotment in favour of the petitioners was regularised subject to their execution of the agreement and this they have not complied with. They have also not, even after lapse of 7 years, set up any industrial unit in the land in question. On the factual correctness of

these two violations, the petitioners have no dispute. If that be so, there is violation of the rules and the 2nd respondent is perfectly justified in resuming the land. Therefore, I have no hesitation to uphold Ext. P10.

The writ petition is devoid of merit and is only to be dismissed and I do so.

ANTONY DOMINIC
JUDGE

jan/-